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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

KEN WATTS,

Plaintiff and Appellant,

v.

SCOTT A. CURRY et al.,

Defendants and Respondents.

2d Civil No. B213862
(Super. Ct. No. CV080389)
(San Luis Obispo County)

A series of seemingly petty, yet niggling, acts fueled by anger and frustration precipitated this unfortunate lawsuit.

Procedural Background

Plaintiff Ken Watts brought an action against defendants Scott A. Curry, County of San Luis Obispo (County), Annette Louder, and Oak Shores Community Association (Oak Shores) and others, not parties to this appeal. His complaint alleged a number of causes of action that included malicious prosecution, false arrest, breach of fiduciary duty, and negligence. In an amended complaint, he alleged additional causes of action against Sheriff's Deputy Scott A. Curry for a violation of his civil rights pursuant to title 42 of the United States Code section 1983 and California Civil Code section 52.

This appeal concerns Watts' second amended complaint. The trial court sustained County's and Curry's demurrers without leave to amend. It dismissed the second

amended complaint against Oak Shores and Louder and awarded attorney fees pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute. We affirm.

FACTS

Watts belongs to Oak Shores. The members of Oak Shores are homeowners interested in the development of property on the shores of Lake Nacimiento.

Watts was concerned that Oak Shores was charging its members illegal fees. In past years he had regularly inspected Oak Shores' board minutes and records without a problem. This lawsuit arose when Oak Shores' new staff member, Louder, allegedly denied him access to inspect Oak Shores' minutes.

On September 14, 2007, Watts walked into the Oak Shores' office, went behind the counter and took from the shelf the notebook containing the minutes he wished to inspect. Louder confronted Watts as he walked into the parking lot. Watts informed her that "he was taking the documents to review and would bring them back after he was done reviewing them."

Watts returned the minutes to the office that evening, but the office was closed. He then left them with a former Oak Shores' board member who lived near the office.

That evening, Watts was arrested by Curry for burglary. Watts explained to Curry that he only had borrowed the minutes to review them as he had done numerous times in the past. His intentions were to return them.

The district attorney filed charges against Watts for burglary and petty theft. The charges ultimately were dismissed with prejudice.

DISCUSSION

Curry and the County

A Procedural Problem

The County and Curry argue that Watts' appeal is premature because he appeals from an order sustaining their demurrer. What is missing is a judgment. (See *Shpillar v. Harry C's Redlands* (1993) 13 Cal.App.4th 1177.) We adopt the policy of the

Shpillar court and consequently agree that there is no appealable order or judgment from which to appeal.

Some Dicta Why It Does Not Matter

Even with a judgment, Watts has no action for probable cause against the County. To prevail, Watts must show Curry lacked probable cause to arrest him. Whether or not Watts intended to permanently deprive Oak Shores of its property is beside the point. Nor is it of any consequence that the district attorney dismissed the criminal charges against Watts. Or that Watts told Curry that he was only borrowing the minutes and that he did not intend to permanently deprive Oak Shores of its property.

A citizen complained that Watts entered a private office and took items not belonging to him. As a matter of law, Curry had probable cause to arrest Watts. (Pen. Code, §§ 836, 847; *Salazer v. Upland Police Dept.* (2004) 116 Cal.App.4th 934, 947.) It is not Curry's role to judge Watts' credibility or to believe his assertion. However ill-advised is the arrest from the perspective of hindsight, Curry is not liable.

We agree with the trial court's observation in its order on the second amended complaint: "To be sure, there are certain aspects of the arrest and prosecution of Watts that appear troubling to the Court, at least without factual amplification. It can be argued that the immediate arrest, subsequent incarceration and felony prosecution of Watts exceeded the bounds of reason and necessity. However, this Court cannot conclude, based upon the facts alleged, that probable cause for a felony arrest was entirely lacking. Moreover, [Watts] has had ample opportunity to allege sufficient facts to constitute a cause of action and still has not done so."

Because Curry is not liable, neither is the County. (*O'Toole v. Superior Court* (2006) 140 Cal.App.4th 488, 509.)

Watts also fails to allege facts supporting his broad assertion that the County violated his constitutional rights through a constitutionally infirm standard operating procedure that constitutes a "permanent and well settled" policy. (See *Monell v. New York City Dept. of Soc. Serv.* (1978) 436 U.S. 658.)

Oak Shores and Louder

The action against Oak Shores and Louder concerns the trial court's dismissal of the second amended complaint and award of attorney fees under the anti-SLAPP statute.

Watts' original complaint against Oak Shores and Louder was dismissed by the trial court pursuant to the anti-SLAPP statute, Code of Civil Procedure section 423.16. Watts filed a second amended complaint alleging essentially the same facts alleged in the original complaint.

We agree with Oak Shores and Louder that the substantive issues raised and repeated in the second amended complaint are not a proper subject of this appeal. The trial court properly dismissed the second amended complaint. (Code Civ. Proc., § 436.) The court was compelled to do so under *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068. Once a SLAPP motion is decided, the procedure is final. Watts apparently agrees and limits his appeal to his contention that the court's award of attorney fees is excessive and an abuse of discretion.

Oaks Shores and Louder point out that the attorney fee award is reviewed under the abuse of discretion standard. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 491.) Watts' argument that the fee award is excessive does not clear the high hurdle imposed by the abuse of discretion standard.

The orders are affirmed. Costs are awarded to respondents.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Charles S. Crandall, Judge

Superior Court County of San Luis Obispo

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